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Supreme Court of the United States

OCTOBER TERM, 1943.

No. 269

GEOPHYSICAL DEVELOPMENT CORPORATION, SHELLEY KRASNOW AND LEON F. CURTISS,
Petitioners,

v.

CONWAY P. COE, COMMISSIONER OF PATENTS,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA, AND BRIEF IN SUPPORT THEREOF.

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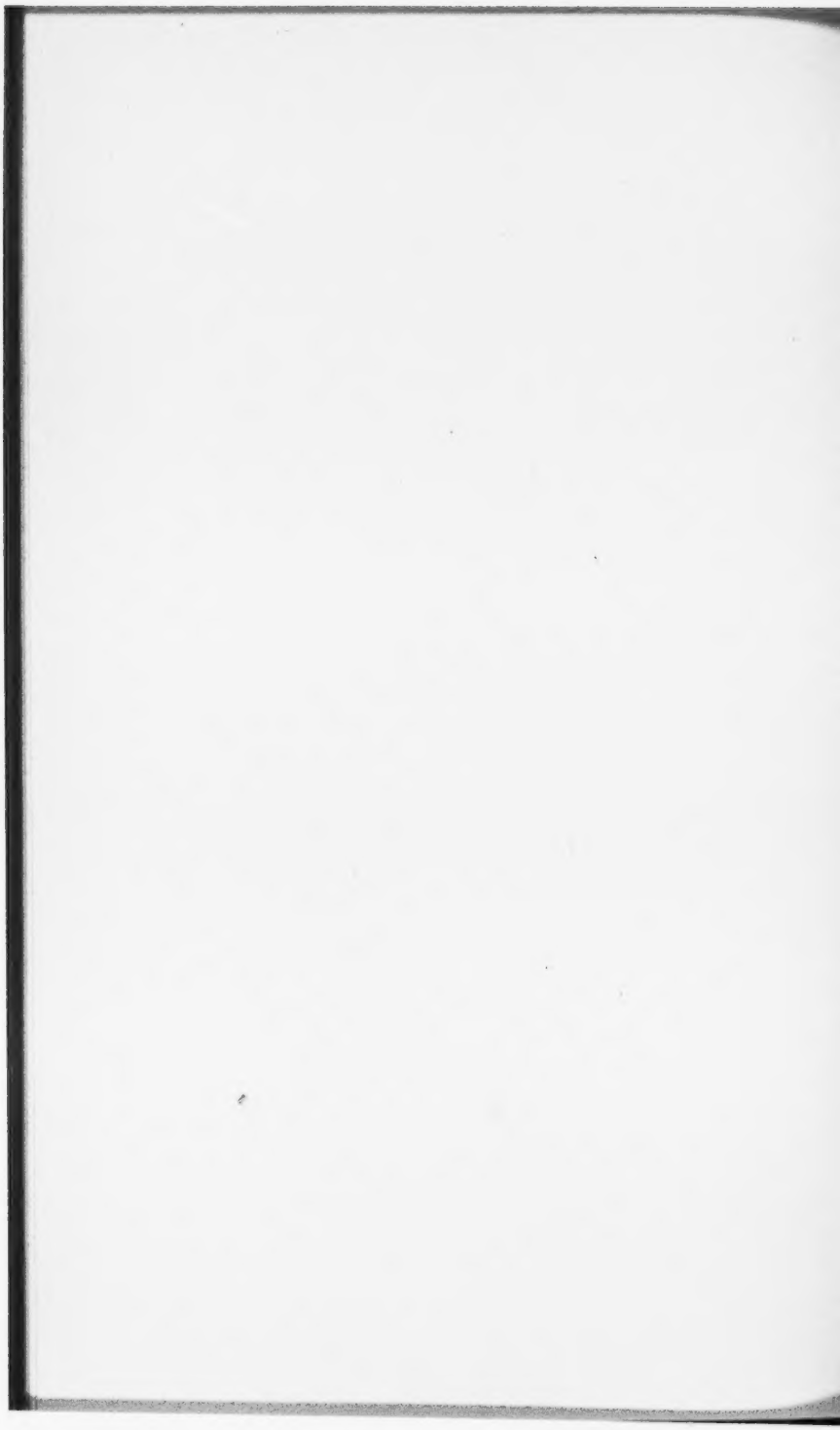

INDEX.

Subject Index.

	Page
Petition for writ of certiorari	1
A. Summary statement of matter involved	1
B. Reasons relied on for allowance of writ	5
Prayer for writ	5
Brief in support of petition	7
I. Opinion of Court of Appeals	7
II. Jurisdiction	8
III. Statement of the case	8
IV. Specification of errors	8
V. Question involved	10
VI. Summary of the argument	10
VII. Argument	10
VIII. Conclusion	20
Appendix—Statutes	21

Cases Cited.

Ackerman v. Light, 96 F. (2d) 304 12
Barney v. Hess, 1910 C. D. 162 18
Baltimore and Ohio Railroad Co. v. United States, 264 U. S. 258 ..... 15, 16
Baltimore and Ohio Railroad Co. v. United States, 298 U. S. 349 14
Bechtold v. Lanser, 82 F. 415 12
Daley v. Trube, 88 F. (2d) 308 16
Earles v. Gomber, 50 App. D. C. 389, 273 F. 353 12
Ellis v. Maddox, 96 F. (2d) 308 ..... 7, 12, 16, 18
Ewing v. United States ex rel. Fowler Car Company, 244 U. S. 1 16
Exhibit Supply Co. v. Ace Patents Corporation, 315 U. S. 126 8

Page

Gehring v. Berry, 1916 C. D. 16 18
Interstate Commerce Com. v. L. & N. R. Co., 227 U. S. 88 15
Kinsman v. Strohm, 1906 C. D. 481 17
Latta and Thompson v. Murphy, 1915 C. D. 7..... 13
Lowry and Cowley v. Spoon, 1906 C. D. 224 18
McCullough v. Cosgrave, 309 U. S. 634 15
Norling v. Hayes, 37 App. D. C. 160 12
Ohio Bell Telephone Co. v. Public Utilities Commission, 301 U. S. 292 16
Oliver v. Felbel, 20 App. D. C. 255 12
Podlesak v. McInnerney, 26 App. D. C. 399..... 11
Radtke Patents Corporation v. Coe, 122 F. (2d) 937, 74 App. D. C. 251 16
Roller v. Goodwin, 282 O. G. 387, 1921 C. D. 11 19
Union Switch & Signal Co. v. Louisville Signal Co., 73 F. (2d) 550 12
White, Application of, 57 App. D. C. 355, 23 F. (2d) 776 12

REGULATIONS.

Rule 95 11
Rule 122, Rules of Practice in the United States Patent Office 11

STATUTES.

R. S. 481, 483, 35 U. S. C. 6 10
R. S. 4904, 35 U. S. C. 52 .....10, 21
R. S. 4916, 35 U. S. C. 64 .....12, 21
Judicial Code, Sec. 240(a), 28 U. S. C. 348(a) 8

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Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA, AND BRIEF IN SUPPORT THEREOF.

May it please the Court:

The petition of Geophysical Development Corporation, Shelley Krasnow and Leon F. Curtiss respectfully shows to this Honorable Court:

A.

SUMMARY STATEMENT OF THE MATTER INVOLVED.

The petitioners filed their complaint (R. 1-15), subsequently amended (R. 34-37), in the District Court of the United States for the District of Columbia against the respondent, as Commissioner of Patents, by which they sought an order

of that Court requiring the respondent to permit the taking of certain testimony and the filing of certain interrogatories in support of their motion, then and now pending, to dissolve an interference declared in a proceeding pending in the Patent Office.

On motion of the respondent (R. 37) the District Court dismissed the amended complaint (R. 38); the petitioners appealed to the United States Court of Appeals for the District of Columbia, which affirmed the judgment of the District Court (R. 40-42).

The facts, as averred by the complaint and the amendment thereto, and admitted by the motion to dismiss, are as follows:

There is pending in the Patent Office the application of petitioners Krasnow and Curtiss for letters patent on certain improvements in method and apparatus for measuring radio activity (R. 1). Petitioner Geophysical Development Corporation is their assignee (R. 1).

The respondent declared an interference in respect of certain of the claims of this application with a then pending application of one Neufeld and with a later filed application of one Howell (R. 2, 5).

Petitioners filed a motion to dissolve the interference, on the ground that the applications of Neufeld and Howell did not contain complete disclosures as required by R.S. 4888, 35 U. S. C. 33 (R. 6). The respondent granted this motion in part (R. 6).

In order to delay or prevent issuance of a patent to petitioners, and to put them to inordinate expense, Neufeld and Well Surveys, Inc., assignee of Neufeld, thereupon disclosed the issues in the interference to one Bender, to whom a patent on a different invention had previously issued, and to Lane-Wells Company, assignee of Bender, and induced Bender and Lane-Wells Company to file an application for reissue of the Bender patent to include the claims involved in the interference (R. 7); Bender and Lane-Wells Company thereupon filed an application for reissue of the Ben-

der patent, alleging in support thereof that the patent previously issued to Bender was inoperative because of the omission from the specification of certain claims corresponding with certain counts of the interference, and falsely alleging that the errors which rendered the patent inoperative arose from inadvertence, accident or mistake (R. 8-9). The reissue application was thereupon included in the interference (R. 11).

Petitioners moved in the Patent Office to dissolve the interference with respect to the Bender application, upon the ground that there was no inadvertence, accident or mistake to support the application for reissue of the Bender patent, and that there was no sufficient excuse for the delay of almost two years in applying for such reissue (R. 14, 19-22). At the same time, they moved that times be set for the taking of testimony in support of their motion and for leave to file interrogatories to be answered by officers of Well Surveys, Inc. and Lane-Wells Company, respectively (R. 14, 16, 22-28). It was stated in the motion to take testimony (R. 23-24) and the statement was verified by the affidavit of petitioner Krasnow (R. 28-29), that the testimony proposed to be taken was to the effect that prior to the issuance of the Bender patent, Krasnow had disclosed to Lane-Wells Company, assignee of Bender, the subject-matter of the petitioners' application and had given it a copy of his application and drawings thereof; that for some time thereafter Lane-Wells Company negotiated with Krasnow for the purchase of rights under his invention; and that there is an identity of interest between Bender and Neufeld and their respective assignees (R. 23-24, 28-20), although ostensibly adverse parties. The interrogatories proposed to be filed showed on their face that they were to elicit testimony as to the identity of interest above referred to (R. 17-18, 27-28).

The Examiner of Interferences dismissed the motion to dissolve, the motion to take testimony, and the motion to file interrogatories. The respondent reversed the action of

the Examiner of Interferences in dismissing the motion to dissolve, and held that the motion to dissolve afforded proper grounds for dissolution, "if established by the record"; however, he affirmed the action of the Examiner of Interferences in denying to the petitioners the right to present evidence in support of their motion, and in denying them the right to file interrogatories (R. 32-33).

Petitioners also aver in their pleadings in the District Court, and the respondent's motion to dismiss admits that:

The original Bender patent was not defective and insufficient but covers the invention intended to be patented therein and there was no inadvertence, accident or mistake in the grant thereof (R. 9);

Petitioners in December, 1937, disclosed the invention set forth in their application, to Bender and his assignee, Lane-Wells Company (R. 9);

During the prosecution of the original Bender patent, Bender and his assignee deliberately canceled claims broader than the interference issue (R. 10), with knowledge of the claim and application of petitioners (R. 12);

The interests of Neufeld and his assignee, Well Surveys, Inc., and of Bender and his assignee, Lane-Wells Company, in the issue of the interference, are identical, and they have at all times been represented by the same record attorneys (R. 11);

The questions raised on petitioners' motion for dissolution in the interference are questions of fact and require the production of evidence not of record in the United States Patent Office (R. 34);

The record in the Patent Office contains none of the evidence on which petitioners must rely to establish the facts in support of their motion for dissolution; they never have had an opportunity to present such evidence, since the Patent Office record was made prior to the questions being raised on the motion for dissolution; and such evidence will not become a part of the record unless petitioners are

permitted to introduce it in the form of affidavits, depositions or other evidence not otherwise of record (R. 35);

No evidence on the question of inadvertence, etc., raised on petitioners' motion to dissolve the interference, will be considered by the respondent after there has been a decision on those questions on the pending motion for dissolution; and petitioners' sole opportunity to have any such evidence considered on those questions is by placing such evidence of record before there is any decision on the motion for dissolution (R. 35-36).

B.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.

1. The case presents an important question of procedure in the United States Patent Office.

2. The opinion and judgment of the United States Court of Appeals for the District of Columbia, sustaining the action of the respondent, sanctions a denial of due process of law to the petitioner, and

3. Is based on an incorrect and improper interpretation of the statutes and regulations relating to proceedings in the United States Patent Office.

WHEREFORE your petitioners respectfully pray that the writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Court of Appeals for the District of Columbia, to certify and to send to this Court for its review and determination on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket No. 8209, Geophysical Development Corporation, Shelley Krasnow and Leon F. Curtiss, *Appellants* v. Conway P. Coe, Commissioner of Patents, *Appellee,* to the end that the said judgment of the

United States Court of Appeals for the District of Columbia be reviewed and determined by this Honorable Court; and that your petitioners may have such other and further relief in the premises as to this Honorable Court may seem meet and just.

LAWRENCE KOENIGSBERGER,
Counsel for Petitioners.